
From: Knoop, Zach [mailto:Zach.Knoop@kniferiver.com]
Sent: Tuesday, October 07, 2008 3:14 PM
To: zzMSHA-Standards - Comments to Fed Reg Group
Subject: RIN 1219-AB41; Comments on Alcohol- and Drug-Free Mines rule

Please see attached comments on the proposed Alcohol- and Drug-Free Mines: Policy, Prohibitions, Testing, Training and Assistance rule.

Thank you--

Zach Knoop
Safety Director
Knife River Corporation
1150 W. Century Ave.
Bismarck, ND 58503

(W) 701.530.1427
(M) 701.226.0835
(F) 701.530.1451

zach.knoop@kniferiver.com

AB41-COMM-51

Date: October 7, 2008

To: Richard E. Stickler, Acting Assistant Secretary for Mine Safety and Health

RE: Comments on Proposed Rule; Alcohol- and Drug-Free Mines: Policy, Prohibitions, Testing, Training and Assistance – RIN 1219-AB41

Knife River Corporation and its operating companies are committed to maintaining a safe, healthy and productive workplace for the benefit of its employees, customers and the public. That commitment is jeopardized when any Knife River employee illegally uses drugs or uses alcohol on the job. Therefore we have developed a stringent drug-free and alcohol-free policy. Knife River supports regulations that make the workplace safer. We, however, feel that sections of the proposed Alcohol- and Drug-Free Mines: Policy, Prohibitions, Testing, Training, and Assistance rule would not make the workplace safer and would in fact set us back in our efforts to create a zero-incident safety culture.

We submit the following comments on the proposed rule for your consideration:

Preamble

Comment: Throughout the Preamble, reference is continually made on the efforts of a few Appalachian states (Kentucky, West Virginia and Tennessee) in addressing their respective problems with drug and alcohol abuse. It is noted in the Preamble, Subpart B that areas within these states have rates of prescription drug misuse higher than the national findings and that counties in eastern Kentucky lead the nation in terms of grams of narcotic pain medication distributed. Further research shows that:

- Tennessee, along with West Virginia and Kentucky, produce the majority of the United States' supply of domestic marijuana.¹
- Other opiates and synthetics admission rates for primary abuse are higher in Appalachia than the rest of the nation, especially in coal-mining areas.²
- According to a 2001 HIDTA report, the Appalachian region, which encompasses parts of Kentucky, Tennessee, Virginia, and West Virginia, has been severely affected by prescription drug abuse, particularly pain relievers, including oxycodone, for many years.³

It is not good policy to develop rules based on local, regional or state issues and enforce them on the rest of the mine operators throughout the nation. These states are addressing their problems, as clearly detailed in the Preamble. As one commenter also noted, there is no strong evidence, other than in certain areas of Appalachia, that the abuse of prescription drugs is a widely recognized safety risk.

Proposed Rule

Comment: Subpart C, .203(a)(1) – Supervisor training for reasonable suspicion should be consistent with DOT FMCSA Part 382.603, which requires an initial two hours of training for designated supervisors and does not require recurrent training. Operators can determine the appropriate frequency of recurrent training, which is biennially for Knife River. Companies such as Knife River, have a robust anti drug and alcohol program in place that covers our general industries, construction industries and our mining industries. The proposed rule would requires us to change our policies for other than mining operation or have two training programs, one for the mining operations and one for all others.

¹ United States Department of Justice, Drug Enforcement Agency, Tennessee State Factsheet, 2008.

² National Opinion Research Center & East Tennessee State University. (2008, May). An Analysis of Mental Health and Substance Abuse Disparities & Access to Treatment Services in the Appalachian Region. Washington, DC: ARC & NORC.

³ United States General Accounting Office. (2003). Prescription Drugs: OxyContin abuse and diversion and efforts to address the problem (GAO Publication No. GAO-04-110). Washington, DC: U.S. General Accounting Office.

Comment: Subpart D, .300(b) – If MSHA is going to deviate from DOT requirements, as this proposal does, they should allow alternative testing methods. Oral fluid drug testing has been shown to be very effective. Companies such as Intercept use LabOne, certified by the HHS, and all positives are reviewed by an MRO. Alternative testing methods would save operators money and time, while still being just as effective of a deterrent to drug use as traditional testing methods.

Comment: Subpart D, .300 (e) – Delete “the” after the word “other” in the sentence.

Comment: Subpart D, .301 – Delete the requirement to test for drugs other than what the DOT requires. Many of our miners also have CDL's and drive commercial motor vehicles. Your proposal, although stated as consistent with the DOT model is not, which will result in additional administrative time and expense, as well as confusion by having two different set of rules to follow. If MSHA believes that the DOT rules are not sufficient, then the two agencies should work together in developing one consistent set of rules. Knife River, and most of its peer competitors, is already required to have a DOT drug and alcohol screening program because many of the operating locations have both construction and mining operations with trucking supporting both the mining and construction efforts.

Comment: Subpart D, .304(b) – Delete the requirement to conduct an alcohol test after a conditional offer of employment has been made. This is a waste of money. A person under the influence of alcohol will exhibit certain physical and behavioral symptoms, while a person that has drugs in his/her system may not (i.e. marijuana use two days ago). An individual being interviewed for a job that is under the influence of alcohol should be weeded out before ever having to conduct a test. Furthermore, prospective employees know that our company conducts drug and alcohol screening because they must sign a screening release form. Because of this knowledge, it is highly unlikely that a new employee will show up for the first day of work under the influence of alcohol. Under this proposed rule, we would have to start an additional program, company-wide, which would add very little value to the existing deterrent. New hires should just be added to the random pool as soon as the offer is given.

Comment: Subpart D, .304(d) – MSHA should allow companies that have more stringent drug and alcohol policies currently in place to continue to use them. Knife River considers a positive alcohol test to be 0.02 percent. At that level and above, individuals will start to experience certain behavioral effects that could jeopardize their safety and the safety of their coworkers. Mandating a 0.04 percent level is fine, providing that the level is considered a minimum standard, allowing operators to set higher standards.

Comment: Subpart E, .400(b) – Delete references which require operators to provide job security to employees and/or prevents termination of employees for first time violations of drug and alcohol policies. This is wrong in so many ways. It sends the wrong message to miners, especially those that are drug and alcohol free while on the job. Why should we invest time and money, and this will result in increased costs, to wait for a person to go through a SAP while other miners have to cover that persons duties. What data is available that indicates high success rates of individuals kicking meth, cocaine or marijuana addictions? MSHA should not be telling operators how to discipline individuals that violate company policy. Moreover, employees of the company are very aware of company drug and alcohol policies. The policies are just as stringent as guarding of machine parts or wearing fall protection gear. A violation of such a policy can lead to termination and this must be so to be a proper deterrent. A worker who violates a drug and alcohol policy that he/she is fully aware of has demonstrated a pattern of choice that will step around other company policies such as machine guarding or fall protection. Being required to maintain such a worker defies good safety sense and weakens an otherwise strong deterrent. An operator should be able to review each violation on a case-by-case basis and make the appropriate disciplinary choices according to the merits of the case. Furthermore, a violation of a fall protection standard or even a sever injury accident would be cited against the operator under the strict liability rule of MSHA; would a violation of the drug policy by an employee who violated the policy for a second time, which results in an injury or accident, be sited against the employer who was forced to retain the worker? Wouldn't this make the employer, the SAP evaluator or even MSHA liable for such an incident?

Comment: Subpart F, 500(d)(2) – In most situations, the alcohol or drug test results will not be maintained at the mine site, but at an administrative office. Is it MSHA's intent to have these test results available at the mine site? “Available upon request” needs to be clearly defined and should allow centralized storage of such documentation for the protection of the employee's right.



Zach Knoop
Safety Director
(701) 530-1427
fax (701) 530-1451

Thank you for considering the above comments. If you have any question, please contact me at 701-530-1427 or by e-mail: zach.knoop@kniferiver.com.

Sincerely,

A handwritten signature in cursive script that reads 'Zach Knoop'.

Zach Knoop